

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF KELSO TO GENE T.
STRADER AND DAVID E. SWEET

RICHARD HOWELL; CAROLINE HOWELL;
DOUGLAS SILVER; CAROLYN SILVER;
RICHARD CHISHOLM; and BARBARA
CHISHOLM,

Appellants,

v.

CITY OF KELSO; GENE T. STRADER;
and DAVID E. SWEET,

Respondents.

SHB No. 77-23

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

This matter, the request for review of the granting of a substantial development permit by the City of Kelso to Gene T. Strader and David E. Sweet, was brought before the Shorelines Hearings Board, W. A. Gissberg, Chairman, Robert F. Hintz, Robert E. Beaty, William A. Johnson, Dave J. Mooney and Chris Smith on August 30, 1977 in Lacey, Washington.

1 Appellant Richard Howell appeared pro se; respondent-permittee, a
2 partnership, appeared through Gene T. Strader, a partner; respondent City
3 of Kelso appeared by and through its attorney, C. LeRoy Borders. Other
4 appellants in this matter made no appearance. David Akana presided.

5 Having heard the testimony and examined the exhibits, and having
6 considered the contentions of the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 A shoreline management substantial development permit was issued to
10 respondent-permittee by the City of Kelso on May 17, 1977. The proposed
11 development is the construction in two phases of 120 multi-family housing
12 units and a utilities corridor on 11.9 acres of pasture land situated
13 adjacent to Corduroy Slough, a branch of the Coweeman River in Kelso.
14 Part of the site is an old landfill. A drawing attached to the permit
15 and application indicates that a landfill is intended but no size is
16 given therefor.¹

17 The proposed apartment buildings will not be constructed within the
18 shoreline area. Earth material that is graded from a knoll outside the
19 shoreline area would be placed within the shoreline in a low area adjacent

20
21 1. The parties agreed that the proposed fill is that described in
22 the Board's prior Order in this matter wherein the proposal was
described as follows:

23 Two areas will be filled using a total of 40,000 cubic yards
24 of earth fill. On the southern boundary of the property, a
25 five foot deep two-acre "lake" which exists six to eight
26 months of the year will be filled. On the western boundary,
the proposed fill would border Corduroy Slough and cover
wetlands. . . . Howell v. City of Kelso, SHB No. 229,
Finding of Fact V.

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1 to Corduroy Slough. The permit and application do not describe the size
2 and location of any proposed structure, but since the buildings are
3 planned outside of the shoreline area, no shoreline permit is needed
4 therefor. However, a shoreline substantial development permit is
5 required for construction within the shoreline area of any water drainage
6 system and it is necessary in considering and evaluating an application
7 for such a permit to know the location and the area of ground coverage
8 of the apartment buildings and other improvements.

9 II

10 The City prepared a draft environmental impact statement (EIS)
11 which was issued on March 17, 1977, and which was to some extent copied
12 from a final EIS of Cowlitz County for an entirely different project.
13 At any event, the final EIS of the City consisted of the draft EIS
14 supplemented by copies of the comments from various agencies and
15 individuals to which comments the City appended its terse responses.
16 Thereafter the Kelso City Council approved the permit application
17 for the substantial development permit described in Finding of Fact I.
18 Appellants' sole contention is that the provisions of the State
19 Environmental Policy Act (SEPA) were violated.

20 III

21 Neither the EIS nor the shoreline permit describes the location
22 of the proposed 120 unit development on the property. However, the
23 developer "guesses" that one-half of the property will be covered with
24 improvements. The preliminary plans show only 60 of the 120 contemplated
25 units and do not show the surface water drainage systems which are
26 planned in the shoreline area. The EIS discussion of surface water

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1 drainage and erosion is as follows:

2 SUMMARY

3 . . .

4 Direct and Indirect Impacts on Environment:

5 . . . Surface water which now stands a substantial portion
6 of the year will become runoff and reach the slough and river
faster than at present.

7 . . .

8 Mitigation of Adverse Impacts:

9 Developers will incorporate into the development all
10 reasonable measures to limit erosional effects and provide
storm water drainage systems where appropriate. . . .²

11

12 II

13 DESCRIPTION OF THE PROPOSAL

14 . . . The major physical and engineering aspects of
15 the proposal include the following factors:

16 . . .

17 3. Installation of storm drainage,³

18

19 III

20 EXISTING ENVIRONMENTAL CONDITIONS

21 ELEMENTS OF THE PHYSICAL ENVIRONMENT

22 A. EARTH

23
24 2. Nowhere in the EIS is there any discussion of or articulated
25 methods of limiting erosion and its effects.

26 3. We note that nowhere is there a description of the means nor a
plan by which the storm drainage shall cross the shoreline to the Slough.

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1 . . .

2 3. . . . A natural depression traps surface water
3 2' to 4' in depth which remains until evaporated
4 or deepage [sic] eliminates it in dry weather in
5 the southwest position.

6 4. No Evidence of Erosion Problems At Present.

7

8 C. WATER

9 1. Surface Water Movement: Surface water generated
10 for this area would be limited to seasonal rain-
11 fall which is absorbed into the soil and/or
12 carried off by Corduroy Slough and the Coweeman
13 River located to the west and south of the
14 proposal.

15 2. Runoff/Absorption: Due to the high water table
16 and the topography of the area, consisting of the
17 natural depression and the type of soil, surface
18 water is partially absorbed into the ground and
19 partially stands, limiting any detrimental
20 runoff effects.

21 . . .

22 4. Surface Water Quantity/Quality: Temporary surface
23 water which occurs on this site would be generated
24 by heavy rainfall, of which the area has an annual
25 precipitation of 40 to 60 inches. Quality of surface
26 water would vary depending upon suspended particles
27 in the atmosphere and the condition of surface it
gathers upon.

IV

IMPACT OF THE PROPOSAL ON THE ENVIRONMENT

. . .

A. EARTH

1. Soils: As a result of this project, there will be
alteration of the soils in the project area. The
construction of multi-family housing and apartment
structure, the paving of parking and driving areas

with underground sanitary sewers, water systems, electrical utilities, telephone systems, and storm drain systems will result in considerable cutting, compaction and filling of the land.

2. Topography: The project during the construction phases, will alter the topography of the area considerably; the hilly northeast portion will be lowered and the depressed area will be filled so that ultimately a gently sloping tract entirely above the water table will be realized.
3. Erosion: Erosion of area affected by cutting of [sic] filling should be minimal due to soil type and topography. Increased runoff of surface [sic] waters will occur after the area is developed but its impact should be minimal due to the proposed storm drainage system, which will convey the runoff to Corduroy Slough and ultimately the Coweeman River.⁴

. . . .

C. WATER

1. Runoff/Absorption: The construction of impermeable surfaces such as driveways and living units will affect the areas' [sic] ability to absorb water inasmuch as the proposal has the potential to cover a large portion of the area. The developer has proposed a storm drainage system to accomodate [sic] for the anticipated additional runoff. Surface water to drain via storm drainage system into Corduroy Slough.

. . . .

VI

IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS [sic] OF RESOURCES

. . . .

6. Construct storm water drainage systems to limit erosional effects of water runoff and siltation of adjacent water bodies.

4. As we have observed, there is no EIS discussion of the type of storm drainage system which will convey the runoff to the Slough and River. Nor does the shoreline management permit itself authorize such construction.

VII

ADVERSE ENVIRONMENTAL IMPACTS WHICH MAY BE MITIGATED

. . .

3. Replace vegetation where indicated as soon as possible to lessen erosional activity and to stabilize soils.

. . .

6. Construction [sic] storm water drainage systems to limit erosional effects of water runoff and siltation of adjacent water bodies.

IV

The Coweeman River, which would ultimately receive surface water drainage from the proposal, contains an important salmon fishery. Notwithstanding this known fact, the City did not request comments from the Department of Fisheries nor discuss potential impact of runoff water on fish in the EIS nor was the Department of Fisheries provided a copy of the draft EIS.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I

In any construction project, before an environmental impact statement can even begin to address its purpose, i.e., disclose adverse environmental effects to the decision-maker, it is basic that the subject matter of the EIS (the total proposal) must be described fully and with certainty and at least the location of all of the buildings to be constructed should

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1 be shown upon the site plan.⁵ The type and location of the storm drain-
2 age system should also be described and discussed.

3 Here, the project described in this EIS is the two phase construction
4 of 120 units of multi-family housing, 60 units each during successive
5 years, on 11.9 acres of land. However, the preliminary plans for the
6 project, described by the developer as "very rudimentary" and which were
7 on file with the City of Kelso and available for inspection, only show
8 the construction of 60 units. The location of the second phase of
9 construction of an additional 60 units is left to speculation as are the
10 developer's "probable" plans, orally described at this Board's hearing,
11 as being to collect and conduit surface runoff water into Corduroy
12 Slough. Nonetheless, this Board's only interest and concern is about
13 construction in the shoreline area, not outside of it except as herein-
14 after noted. The only construction which does occur in the shoreline
15 area in this instance is grading of the "mountain" and redistributing
16 it in the form of a fill and piping or ditching the runoff of surface
17 drainage waters to Corduroy Slough. The apartment building construction
18 is apparently all outside of the shoreline area. Nonetheless, in
19 evaluating this permit for SEPA compliance, we look at the impacts of
20 the total proposal as they effect the shoreline area.

21 There simply is no articulated plan by which the problems of surface
22 water drainage into Corduroy Slough are adequately addressed and mitigated
23 either in the environmental impact statement or as mitigating conditions
24

25 5. We agree that the detailed drawings need not be included in the
26 EIS. See WAC 197-10-440(6)(e).

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1 imposed upon the shoreline management substantial development permit.
2 Indeed, it would have been difficult or impossible for the City of Kelso
3 to impose meaningful and specific conditions on the permit itself
4 because the developer has not even yet determined nor does the EIS
5 disclose what method will be utilized in carrying surface waters to
6 the Slough nor are the plans for the apartment structures and related
7 paved areas sufficiently defined to permit evaluation of runoff
8 potentials. Not knowing the scale of the development which will affect
9 the shoreline, it is impossible to ascertain the quality, quantity and
10 flow rate of the water runoff, without which one cannot determine the
11 type and mode of drainage facilities to collect and discharge it.
12 With such information a reasoned judgment could have been made by the
13 City or this Board as to what specific mitigative measures are required
14 to prevent such damage.

15 II

16 The Guidelines of the Council on Environmental Policy, as contained
17 in WAC 197-10, provided detailed rules governing the circulation of
18 draft environmental impact statements. The Department of Fisheries is
19 an agency possessing environmental expertise in the areas of water
20 resources, water quality and fish.⁶ The Guidelines require:

21 (1) A copy of each draft EIS shall be mailed . . . to the
22 following . . .

23 (c) Each agency having jurisdiction by law over, or
24 environmental expertise pertaining to a proposed action

25 The purpose of requiring a draft EIS to be provided agencies with

26 6. WAC 197-10-465.

1 expertise is simply to give such an agency the opportunity to communicate
2 its knowledge to a lead agency in order that its decision-maker shall be
3 better prepared to make an informed decision calculated to avoid or
4 minimize adverse environmental effects. Nonetheless, we do not now hold
5 that failure to provide an agency with expertise with a copy of the
6 draft environmental impact statement in itself constitutes error
7 sufficient to cause the permit to be vacated. Neither do we now
8 foreclose finding such to be error in a future appropriate case. In
9 this appeal, we can only speculate what response, if any, would have
10 been given by the Department of Fisheries to the City had the Department
11 been provided a copy of the EIS. We believe that had a draft EIS
12 revealed, under Description of the Proposal, the fact that storm
13 drainage was to be routed to the Slough and River, it would be likely
14 that the Department of Fisheries would have communicated its expertise
15 so as to assist in the mitigation or the prevention of adverse siltation
16 or pollution to such fish-inhabited waters. One would have to read the
17 entire draft EIS, as presently constituted, in order for the Department
18 of Fisheries to have been alerted to the fact that it was contemplated
19 that surface waters would be routed to waters of the state.

20 III

21 The EIS is inadequate in its description of the techniques which
22 are available and those which will be utilized for disposing of the
23 surface water drainage runoff to the Slough and in its treatment of
24 erosion and surface water drainage and the effects thereof upon the
25 waters of Corduroy Slough and the Coweeman River, both during
26 construction and after completion of the development, so as to mitigate

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1 or insure against adverse environmental impacts. Adverse effects which
2 can be mitigated should be mitigated as required by RCW 90.58.020. The
3 permit should therefore be vacated.

4 IV

5 Appellants' remaining contentions are without merit.

6 V

7 Any Finding of Fact which should be deemed a Conclusion of Law
8 is hereby adopted as such.

9 From these Conclusions, the Shorelines Hearings Board enters this

10 ORDER

11 The substantial development permit be and the same is vacated
12 without prejudice to the applicant to reapply for the permit.

3 DATED this 11th day of October, 1977.

14 SHORELINES HEARINGS BOARD

15 W. A. Gissberg
16 W. A. GISSBERG, Chairman

17 Robert E. Beaty
18 ROBERT E. BEATY, Member

19 Robert F. Hintz
20 ROBERT F. HINTZ, Member

21 William A. Johnson
22 WILLIAM A. JOHNSON, Member

23 Dave J. Mooney
24 DAVE J. MOONEY, Member

25 Chris Smith
26 CHRIS SMITH, Member

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